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1953

# The New Constitution of Poland

Wencelas J. Wagner

*Indiana University School of Law*

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### Recommended Citation

Wagner, Wencelas J., "The New Constitution of Poland" (1953). *Articles by Maurer Faculty*. Paper 2323.  
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dent, assisted by a Council of Ministers composed of civilians. The leaders of the two majority parties, the Authentic Party which was in power, and the Orthodox Party which seemed about to win in the elections that were to be held, continue strongly opposed to the new *de facto* Government and have refused to collaborate in the new institutions. The Consultory Council was appointed on the basis of personalities selected from all spheres of professional life.

Cuba, therefore, is subject to a *de facto* dictatorship, which has clothed itself in a provisional mantle and which promises to hold elections next year. So far however, it has not assumed the drastic character customary in other Latin-American dictatorships.

JESUS DE GALINDEZ\*

### THE NEW CONSTITUTION OF POLAND

Poland's constitutional history is one of the most interesting in Europe; usually, the constitutional law institutions of Poland preceded those introduced later on in other continental countries. Generally, it is little known that as early as 1505 the Polish constitution "Nihil Novi" firmly established the parliamentary form of government, developed by custom in the preceding century. At the same time, other European countries, England excepted, entered the path of absolutism.

Poland was also the first country to enact a modern constitution on the continent: its basic law of May 3rd, 1791,<sup>1</sup> was a few months older than the French revolutionary constitution of the same year. It was, however, in force only a short time, as Poland was partitioned by Austria, Prussia, and Russia and recovered her independence only after World War I. A new constitution was enacted in 1921; this was in effect until 1935 when it was replaced by the last prewar Polish constitution.

All these constitutions were the products of Polish political thought, following the country's traditions, adapted to its needs, and taking into account the particular requirements of their times. The same observations do not apply to the new constitution of July 22, 1952,<sup>2</sup> as is quite understandable in view of the present predicament of the country. The new basic law of Poland patterns itself on that of Soviet Russia, lacks originality, and embodies communist principles which to a greater or lesser extent were imposed upon the country even before its enactment. However, it is not a mere copy of the Soviet constitution, although the general plan is similar and, out of 91 articles, 50 contain clauses more or less strictly translated from the basic law of the U.S.S.R. It

\* Lecturer, Columbia University.

<sup>1</sup> This date became a Polish national holiday which has been celebrated ever since; it is not recognized, however, by the present regime of the country.

<sup>2</sup> For the Polish text of the constitution, see *Konstytucja Polskiej Rzeczypospolitej Ludowej*, Biblioteka Nowej Wsi, 7.26.1952. For the English text, see the Draft Constitution of the Polish People's Republic, Polish Embassy in Washington, April 1952; a few completely insignificant changes relating to the phraseology of some articles in the draft have been made in the final text.

falls short of a perfect communist piece of legislation. The explanation of this fact is simple. The Soviet constitution of 1936 was enacted after nearly twenty years of communistic regime, after all the opposition had been exterminated, and most theories of Marx and Lenin could be given full effect. The Polish constitution was drafted only seven years after Moscow set up the communist government in the country. Besides, the centuries-long czarist regime had made the Russians readily submissive to the will of any ruler, whereas the Poles were always attached to their liberties and to western culture.

Therefore, whereas it was possible, in article 2 of the Soviet constitution, to state that the new structure of the country "grew and became strong as a result of the overthrow of the power of the landlords and capitalists and the conquest of the dictatorship of the proletariat," the new Polish constitution could not assert that communist principles had taken deep roots in Poland; its preamble affirms, as the main purpose of the constitution, the realization of the "great ideas of socialism." There is no mention of any dictatorship, but we find in the preamble a declaration that after "the power of capitalists and landlords has been overthrown, . . . a new social system . . . is taking shape and *growing in strength*" (emphasis supplied).

The sense of the preamble is that the transformation of the social foundations of the country is progressive, and article 3, clause 4, proclaims the fight against "those classes of society which live by exploiting the workers and farmers."

The result of this difference in the situation in Poland and that of the Soviet Union is that article 1 of the Soviet constitution can call the Union "a socialist state of workers and peasants," whereas article 1 of the Polish constitution defines the country as a "State of People's Democracy." According to the official theory, "people's democracies" are a form of dictatorship of the proletariat falling short of a perfect socialist state.

A further consequence of this difference is that in the Soviet Union there can be no other party than the communist, whereas article 72 of the Polish constitution, which enumerates the citizens' organizations permitted by law, also mentions political organizations. This is a theoretical difference, as in practice no open opposition to communism is allowed. In the early years of the present regime in Poland, the Polish Peasant Party tried to slow down the communisation of the country and to disagree with certain measures taken by the government. As a result, the leaders of the party had to escape from the country, others were arrested together with thousands of party members, and the party itself was integrated into another peasant party created by the communists.<sup>3</sup> Nevertheless, the constitutional permission of political activity creates

<sup>3</sup> The other two great Polish parties, the National Democratic and the Socialist ones, do not exist in Poland today. The parties "concessioned" or rather created by the communist government are the Christian Democratic and the Democratic, not to mention the new peasant party. All are under communist leadership. They presented, during the elections, common candidates with the communist (workmen's) party. After the liquidation of the Independent Peasant Party, there exists only the communist bloc.

the illusion of political freedom and is evidence that in communist eyes Poland is only in an intermediary stage towards complete socialization.

This is further evidenced by the fact that, unlike that of the Soviet Union, the Polish constitution does not yet nationalize all the means of production.<sup>4</sup> The socialization of plants and the confiscation of large and medium estates without any indemnity has been in effect for a long time,<sup>5</sup> but the individual ownership of small farms is still recognized, although agricultural collective farms receive special protection and assistance from the state (article 10). However, article 13 limits the constitutional guaranty of the right of inheritance to "personal" property.

The system of government, established by the constitution, more closely follows the Soviet pattern than its general provisions. In conformity with communist doctrine, no separation of powers is provided. The powers of the state are exercised, on the lower level, by "national councils" (articles 34-45) similar to the soviets of working people's deputies, provided for by article 94 of the Soviet constitution. The traditional Polish name for the country's parliament, the "*Sejm*", has been retained. There is no senate in Poland nor in any other communist state. According to the Soviet pattern, the constitution sets up a state council as the most important organ of the state. The council is equivalent to the presidium of the Supreme Soviet of the U.S.S.R., consists of 15 members, elected by the *Sejm*, functions in permanency, is endowed with very broad legislative and executive powers (the new constitution abolished the office of president of the republic), and has authority to exercise the whole of the *Sejm's* legislative power when the latter is not in session. Two yearly sessions of the *Sejm* are provided for by the constitution, but, as the practice of the last few years has shown, these are short and insignificant.

Article 25, clause 2, of the constitution states that the *Sejm* is an organ superior to the council. However, there is no provision respecting revocability of the council or of its individual members. Thus, the council seems to be quite independent.

The ministers of the state are appointed by the *Sejm* (article 29) and responsible to it and the state council.

The judiciary is composed of the supreme court, the *voievodship* (provincial) courts, the county courts, and the special courts (article 46). The members of the supreme court are appointed for a period of five years by the state council (art. 51). The judges of inferior courts are to be elected, according to the pro-

<sup>4</sup> Article 4 of the Soviet constitution provides: "The economic foundation of the U.S.S.R. is . . . the socialist ownership of the instruments and means of production, firmly established as a result of . . . the abolition of private ownership of the instruments and means of production."

<sup>5</sup> Decree of the P.N.L.C. of Sept. 6, 1944 (4 Dz.U. 17, 1944), as amended by decree of July 8, 1946 (34 Dz.U. 215, 1946); and decree of Aug. 8, 1946 (39 Dz.U. 233 1946). By virtue of Art. 19 (1) of the first mentioned decree, "the dispossessed former owners of estates . . . may be allotted a farmhold or will be granted as compensation the salary of a category VI government official" (as translated in 1 Rev. of Polish Law 9, 1947).

cedure fixed by statutes to be enacted (article 50). Inspired by article 113 of the Soviet constitution, the Polish constitution establishes the office of the general prosecutor, appointed by the state council and endowed with broad functions (article 54).

The reference to special courts which may be created by statute (article 46) shows that the present practice, according to which many important crimes (and particularly the political ones) are not passed upon by ordinary tribunals will be maintained. According to one statute, major political crimes are within the jurisdiction of military courts<sup>6</sup>; other statutes subject "economic crimes" to the jurisdiction of extraordinary "commissions," which have the power to decree the confiscation of property and confinement in compulsory labor camps for two years<sup>7</sup>. Article 53 enacts the principle of public judicial proceedings, but provides for exceptions settled by law. Statutes establishing secret hearings have already been enacted.<sup>8</sup>

A special chapter of the constitution is devoted to the "rights and duties of the citizens." Some of these "rights," such as the right to work, to rest, to the protection of health, to education and to the use of social establishments, are merely programmatic; others, such as the freedom of expressing one's opinions in print or personal inviolability, seem paradoxal in the light of the grim reality of the Communist regime, which penetrates into all the details of public and private life; still others are in effect nullified by additional clauses of the con-

<sup>6</sup> Special criminal courts were established on Sept. 12, 1944, by a decree of the "Polish National Liberation Committee," organized in Moscow, while the larger part of Poland was still occupied by the Germans (4 Dziennik Ustaw (Official Gazette) 21, 1944). The jurisdiction of these courts covered cases involving collaboration with the occupant and also included treason (decree of Nov. 4 1944, 11 Dz.U. 54, 1944; see also Art. 7 of the decree of the P.N.L.C. of Aug. 31, 1944, 4 Dz.U. 16, 1944).

The most flagrant exception to the principle of ordinary courts, however, is the decree of the P.N.L.C. of Oct. 30, 1944 (10 Dz.U. 50, 1944), which remains in force ever since it was enacted. Art. 16 of the decree subjects crimes against public safety and the state to the jurisdiction of the military courts (see also Art. 35 (1) of the decree of Nov. 16, 1945, 53 Dz.U. 300, 1945; Art. 51 of the decree of June 13, 1946, 30 Dz.U. 192, 1946).

The atmosphere in which the special criminal courts work is reflected in the summary of their procedural features, as given by the official publication of the Polish Ministry of Justice, 1 Rev. of Polish Law (1947) 12-13: "A trial is not required in matters within the cognizance of special penal courts . . . investigation is made by the prosecutor who may order preventive arrest and seizure of the property of the offender . . . the indictment does not require supporting evidence . . . the decision can be appealed from only by the prosecutor . . ."

<sup>7</sup> Among such commissions, the most important are: (a) the Special Commission for the Prosecution of Abuses and Corrupt Practices in the Management of Public Property, decree of May 16, 1946 (23 Dz.U. 14, 1946); Art. 10 (1) and (3) of the decree gives to the Commission the power to confine the wrongdoer to a forced labor camp and to confiscate his property; (b) the Special Commission to Fight Economic Abuses, created by the statute of June 2, 1947 (43 Dz.U. 218, 1947); Art. 17 of the statute grants to this Commission powers identical to those of the previously mentioned Commission.

<sup>8</sup> The most unequivocal provision in this respect is that of Art. 62 of the decree of the P.N.L.C. of Sept. 23, 1944 (6 Dz.U. 29, 1944), dealing with the procedure before military courts: "The trial proceeds behind closed doors."

stitution. Thus, article 70 of the constitution provides for "freedom of conscience and religion," but it adds that the abuse of this freedom "for purposes endangering the interests of the Polish People's Republic is punishable." Similarly, the theoretical freedom of association is rendered illusory by the prohibition of "setting up and participating in associations whose aims or activities are directed against the political and social structure or against the legal order of the Polish People's Republic."

Just before this issue of the Journal went to press, the first news of the provisions of the new Rumanian constitution, enacted on September 25, 1952, reached this country. This constitution replaces that of 1948 and carries forward the communisation of Rumania, going further in this direction than the new Polish constitution. E.g., article 126 states clearly that the communist party enjoys in the state the position of leadership.

But the most striking provision of the new Rumanian constitution is the one requiring the foreign relations of the state to be based on peace, friendship, and alliance with the Soviet Union and the countries of "people's democracies." Although other nations behind the Iron Curtain are also completely dependent on the Union, their constitutions purport to establish the principle of their complete independence in internal as well as in international relations. Rumania is the first country to establish friendship with the Soviet Union as a constitutional requirement. It may be said that this clause puts an end to the existence of Rumania as a theoretically independent nation.

W. J. WAGNER\*

### ENACTMENT OF A NATIONALITY LAW IN ISRAEL

Following the establishment of the State of Israel on May 14, 1948, one would have expected an act creating Israel citizenship to be among the first to be enacted by Israel's Parliament known as Knesseth. Such, however, has not been the case. Prolonged debating delayed the enactment of a nationality law until April 1st, and its going into effect until July 14, 1952.<sup>1</sup>

During the intervening four years, Israel, technically speaking, had no citizens. Although Palestinian citizenship became meaningless upon the termination of the British Mandate, the Palestine Citizenship Orders (1925-1942) remained on the law books of Israel, until they were repealed by the Nationality Law. Some of the reasons for the delay are given hereunder.

It was the historic bond between the Jewish people and the land of Israel that contributed largely toward the adoption of a resolution by the General Assembly of the United Nations, on November 29, 1947, which eventually led to

\*Teaching fellow, Northwestern University Law School.

<sup>1</sup> This law was first published as a Bill in Hatsa'ot Hok No. 48 of 12 Tamuz, 5710 (27 June, 1950) p. 190. It was subsequently modified and, in its modified form, published as a new Bill in Hatsa'ot Hok No. 93 of 22 Heshvan, 5712 (21 November, 1951) p. 22. It was passed by Knesseth on 6 Nissan, 5712 (1 April, 1952) as Hok Haezrahuth (Nationality Law) 5712-1952. It was published in Reshumoth, the Israel Official Gazette, Sefer Hahukim No. 95 of 13 Nissan, 5712 (8 April, 1952) p. 146 and went into effect 21 Tamuz, 5712 (14 July, 1952).